IN THE HIGH COURT OF UTTARAKHAND ATNAINITAL

Writ Petition No. 768 of 2003 (M/S)

Hari Singh son of Kushal Singh, resident of Bhogpur, Tehsil and District Haridwar.

.....… Petitioner.

Versus

1. District Judge Haridwar, District Haridwar.
2. Civil Judge (Junior Division), Haridwar.
3. Khub Chand son of Dalmir, Resident of Bhogpur, Tehsil and District Haridwar.
4. Sunder Son of Desh Raj, Resident of Bhogpur, Tehsil and District Haridwar.

…..Respondents.

Sri Alok Singh, Senior Adv., assisted by Sri D.Barthwal, learned counsel for the petitioner.
Sri Gopal Narain Srivastava, Brief Holder of the State, learned counsel for the State.
Sri Sharad Sharma, Advocate, learned counsel for the respondent nos. 3 & 4.

Dated May 09, 2007.

Hon'ble B.S.Verma, J.

The present writ petition has been filed for issue a writ, order or direction in the nature of certiorari, quashing the impugned order dated 2-8-2003 passed by the Civil Judge (Junior Division) Haridwar as well as judgment and order dated 7-8-2003 passed by the District Judge, Haridwar (Annexure Nos. 8 and 9 respectively). Prayer for mandamus of this Court has also been made prohibiting the respondent nos. 3 and 4 not to flow dirty water over the disputed property/Rasta as shown in the map.

Brief facts, giving rise to the present writ petition, are that the plaintiff-petitioner is the owner in possession of the property detailed in the plaint map as well as Rasta shown by letter A.B.E.F. which is private and personal *Rasta* of the petitioner. Adjoining to the property of the petitioner, there is house of defendant towards north. It is alleged that some dispute arose in the

month of May 2002 and a *Panchayat* was called to reconcile the matter between the parties and it was decided that the defendants-respondent nos. 3 and 4 may use the said Rasta with the condition that they shall not flow water over the Rasta. The decision of Panchayat was reduced inwriting and has been duly signed by the parties and other persons. It is alleged that defendants gave threatening that they would dig drain over the Rasta for flow of water, therefore, the petitioner filed Original Suit No. 129 of 2002 Hari Chand Vs. Khub Chand and another in the court of respondent no.2. Along with the suit, plaintiff also filed application for temporary injunction. The defendants contested the application and filed counter affidavit. The petitioner filed rejoinder affidavit. Both the parties however admitted the decision of the Panchayat dated 12.5.2002. The trial court after hearing both the parties rejected the application for temporary injunction by order dated 2-8-2003, which is annexed as Annexure No. 8 to the writ petition.

Aggrieved, the plaintiff went up in Appeal under Order 43, Rule 1(r) of the Code of Civil Procedure before the respondent no.1, which was registered as Civil Misc. Case No. nil of 2003, Hari Singh Vs. Khub Chand and another. The case was heard by the District Judge Haridwar on merit at admission stage. After hearing both the parties, the appellate court did not find favour with the plaintiff-petitioner and dismissed the appeal at the threshold vide order dated 7-8-2003.

I have heard learned counsel for both the parties and perused the record.

In the course of arguments, learned counsel for both the parties have urged that the ends of justice would be subserved if the trial court is directed to decide the suit on merit expeditiously within a time frame and till the decision of the suit, both the parties are ordered to maintain status quo.

In the facts and circumstances of the case without going into the merit of the case and taking into consideration the submissions made by learned counsel for both the parties, the Civil Judge (Junior Division) Hardiwar is directed to decide the Original Suit No. 129 of 2003, Hari Singh Vs. Khub Chand and another pending in that court, on merit expeditiously, preferably within a period of one year from the date of production of certified copy of this order. Both the parties shall cooperate in the speedy decision of the said suit before the trial court.

With the above direction, the writ petition is disposed of finally.

All applications stand disposed of.

(B.S.Verma, J.)

RCP